IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1663 OF 2006

Arvind Loonkaranji Chhajer ...Petitioner

V/s.

Vinit Textiles Mills & Anr. ...Respondents

Mr.Ganesh K. Gole for Petitioner.
Mr. P.S. Hingorani, APP for the State.

CORAM : V.M. KANADE, J.

DATED : 16th AUGUST, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned APP for the State.

2. The Petitioner takes exception to the order passed by Judicial Magistrate, First Class, Ichalkaranji in a complaint filed by the Respondent No.1 whereby the Magistrate was pleased to direct the police to investigate the case U/s.156(3) of Cr.P.C. Petitioner's revision application challenging the said order was also dismissed. Being aggrieved by the aforesaid two orders, the Petitioner has filed this Writ Petition U/s.227 of Constitution of India.

3. Learned counsel for the Petitioner submitted that the

averments made in the complaint were inherently improbable. Complainant's case in brief is that he was informed by the accused that if he deposits a cheque of Rs.27,285/- dated 18/05/2005 which was given to him by one of the accused, same would be honoured by the bank. Learned counsel for the Petitioner submitted that the cheque was endorsed in favour of the complainant. He further submitted that in para 3 of the complaint, it was an averment made by the complainant that on the basis of this representation, he gave cheque dated 18/03/2005 for an amount of Rs.97,623/-. He submitted that the complainant had not stated reason why he paid said cheque of Rs.97623/- when had received a cheque only for an amount of Rs.27,285/-. Secondly, learned counsel for the Petitioner submitted that if the said transaction was that of bill discounting facility which was available to the accused, it was improbable that the complainant would accept the cheque of Rs.27,285/- and in lieu of said cheque, gave cheque to the accused for an amount of Rs.97,623/-. He submitted that, therefore, averments made in the complaint were inherently improbable and they were completely vague as no particulars had been given regarding the transactions for

which said amount of Rs.97,623/- was paid by the cheque by the complainant.

4. It is not possible to accept the submissions made by the learned counsel for the Petitioner. Petitioner is challenging the order passed by the Magistrate whereby direction was given to the police to investigate U/s.156(3) of Cr.P.C. In my view, at this stage, the Writ Petition has been filed prematurely. It is possible after investigation, police machinery may accept defence and explanation given by the petitioner and submit a negative report to the Court. Therefore, at this state, it is not necessary to interfere with the impugned order. In the result, Writ Petition is dismissed.

5. It is clarified that the Magistrate or investigating agency may be not be influenced by any observations made by this Court while dismissing the writ petition.

V.M. KANADE, J.